

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRENDA L. NIEMI,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 3:15-cv-05658-KLS

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of her application for supplemental security income (SSI) benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge.¹ For the reasons set forth below, the Court finds that defendant's decision to deny benefits should be reversed and that this matter should be remanded for further administrative proceedings.

FACTUAL AND PROCEDURAL HISTORY

On March 14, 2012, plaintiff applied for SSI benefits alleging she became disabled beginning November 1, 2008.² Her application was denied on initial administrative review and on reconsideration.³ At a hearing held before an Administrative Law Judge (ALJ) plaintiff appeared and testified, as did a vocational expert.⁴ At the hearing, plaintiff amended her alleged

¹ 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13.

² Dkt. 9, Administrative Record (AR), 16.

3 *Id*

4 AR 34-79

ORDER - 1

1 onset date of disability to March 14, 2012.⁵

2 In a written decision, the ALJ found that plaintiff could perform other jobs existing in
 3 significant numbers in the national economy and therefore that she was not disabled.⁶ The
 4 Appeals Council denied plaintiff's request for review of the ALJ's decision, making it the final
 5 decision of the Commissioner, which plaintiff appealed to this Court.⁷

6 Plaintiff seeks reversal of the ALJ's decision and remand for further administrative
 7 proceedings, arguing the ALJ erred:

- 9 (1) in evaluating the medical evidence in the record, including the opinion
 10 of Kathleen Mayers, Ph.D.;
- 11 (2) in discounting plaintiff's credibility;
- 12 (3) in assessing plaintiff's residual functional capacity (RFC); and
- 13 (4) in finding plaintiff could perform other jobs existing in significant
 14 numbers in the national economy.

15 For the reasons set forth below, the Court agrees the ALJ erred in evaluating Dr. Mayers'
 16 opinion, and thus in assessing plaintiff's RFC and in finding she could perform other jobs. As
 17 such, remand for further administrative proceedings is warranted.

18 DISCUSSION

19 The Commissioner's determination that a claimant is not disabled must be upheld if the
 20 "proper legal standards" have been applied, and the "substantial evidence in the record as a
 21 whole supports" that determination.⁸ "A decision supported by substantial evidence nevertheless
 22 will be set aside if the proper legal standards were not applied in weighing the evidence and

24 ⁵ AR 16, 38.

25 ⁶ AR 16-29.

26 ⁷ AR 6; 20 C.F.R. § 416.1481; Dkt. 3.

⁸ *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991).

ORDER - 2

1 making the decision.”⁹ Substantial evidence is “such relevant evidence as a reasonable mind
 2 might accept as adequate to support a conclusion.”¹⁰ The Commissioner’s findings will be
 3 upheld “if supported by inferences reasonably drawn from the record.”¹¹

4 Substantial evidence requires the Court to determine whether the Commissioner’s
 5 determination is “supported by more than a scintilla of evidence, although less than a
 6 preponderance of the evidence is required.”¹² “If the evidence admits of more than one rational
 7 interpretation,” that decision must be upheld.¹³ That is, “[w]here there is conflicting evidence
 8 sufficient to support either outcome,” the Court “must affirm the decision actually made.”¹⁴

10 I. The ALJ’s Evaluation of Dr. Mayers’ Opinion

11 The ALJ is responsible for determining credibility and resolving ambiguities and
 12 conflicts in the medical evidence.¹⁵ Where the evidence is inconclusive, “questions of credibility
 13 and resolution of conflicts are functions solely of the [ALJ].”¹⁶ In such situations, “the ALJ’s
 14 conclusion must be upheld.”¹⁷ Determining whether inconsistencies in the evidence “are material
 15 (or are in fact inconsistencies at all) and whether certain factors are relevant to discount” medical
 16 opinions “falls within this responsibility.”¹⁸

18 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings
 19

20 ⁹ *Carr*, 772 F.Supp. at 525 (citing *Brawner v. Sec’y of Health and Human Sers.*, 839 F.2d 432, 433 (9th Cir. 1987)).

21 ¹⁰ *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at 1193.

22 ¹¹ *Batson*, 359 F.3d at 1193.

23 ¹² *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975).

24 ¹³ *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

25 ¹⁴ *Allen*, 749 F.2d at 579 (quoting *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

¹⁵ *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

¹⁶ *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

¹⁷ *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999).

¹⁸ *Id.* at 603.

1 “must be supported by specific, cogent reasons.”¹⁹ The ALJ can do this “by setting out a detailed
 2 and thorough summary of the facts and conflicting clinical evidence, stating his interpretation
 3 thereof, and making findings.”²⁰ The ALJ also may draw inferences “logically flowing from the
 4 evidence.”²¹ Further, the Court itself may draw “specific and legitimate inferences from the
 5 ALJ’s opinion.”²²

6 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
 7 opinion of either a treating or examining physician.²³ Even when a treating or examining
 8 physician’s opinion is contradicted, that opinion “can only be rejected for specific and legitimate
 9 reasons that are supported by substantial evidence in the record.”²⁴ However, the ALJ “need not
 10 discuss *all* evidence presented” to him or her.²⁵ The ALJ must only explain why “significant
 11 probative evidence has been rejected.”²⁶

12 In general, more weight is given to a treating physician’s opinion than to the opinions of
 13 those who do not treat the claimant.²⁷ On the other hand, an ALJ need not accept the opinion of a
 14 treating physician, “if that opinion is brief, conclusory, and inadequately supported by clinical
 15 findings” or “by the record as a whole.”²⁸ An examining physician’s opinion is “entitled to

18 ¹⁹ *Reddick*, 157 F.3d at 725.

19 ²⁰ *Id.*

20 ²¹ *Sample*, 694 F.2d at 642.

21 ²² *Magallanes v. Bowen*, 881 F.2d 747, 755, (9th Cir. 1989).

22 ²³ *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).

23 ²⁴ *Id.* at 830-31.

24 ²⁵ *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation omitted) (emphasis in original).

25 ²⁶ *Id.*; see also *Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

26 ²⁷ See *Lester*, 81 F.3d at 830.

27 ²⁸ *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); see also *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001).

ORDER - 4

1 greater weight than the opinion of a nonexamining physician.”²⁹ A non-examining physician’s
 2 opinion may constitute substantial evidence if “it is consistent with other independent evidence
 3 in the record.”³⁰

4 Based on a psychological evaluation Dr. Mayers performed, she opined that plaintiff’s
 5 “ability to adapt to a work-like setting is decreased by her medical and emotional difficulties.”
 6 Dr. Mayers further opined that if plaintiff’s “medical problems did not interfere,” and if plaintiff
 7 could “control her panic episodes with medication or treatment procedures, she probably could
 8 maintain attention and concentration through a normal eight-hour workday, and probably would
 9 be able to tolerate changes in a competitive work setting.”³¹ In discussing Dr. Mayers’ opinion,
 10 the ALJ stated she gave “great weight” to her conclusion that Plaintiff could “maintain attention
 11 and concentration through a normal eight-hour workday” and “tolerate changes in a competitive
 12 work environment.”³²

14 Plaintiff argues the ALJ erred in failing to acknowledge Dr. Mayers’ qualification that
 15 her ability to adapt would be decreased by her medical and emotional difficulties, as well as the
 16 contingent nature of Dr. Mayers’ conclusion that plaintiff could maintain attention and probably
 17 tolerate work changes if she could control her panic episodes with treatment. The Court agrees.
 18 Defendant argues these are equivocal statements, and that to the extent they do not describe
 19 specific work-related functional limitations, they are not significant probative evidence the ALJ
 20 was required to discuss. But Dr. Mayers’ statements, although perhaps not as definitive as they
 21 could be, clearly indicate she felt plaintiff’s abilities in the area of attention, concentration and

24 ²⁹ *Lester*, 81 F.3d at 830-31.

25 ³⁰ *Id.* at 830-31; *Tonapetyan*, 242 F.3d at 1149.

26 ³¹ AR 764.

32 AR 25.

1 adaptation may be significantly more limited than the ALJ described. The ALJ thus should have
 2 addressed those limitations. Her failure to do so constitutes reversible error.

3 **II. The ALJ's RFC Assessment**

4 The Commissioner employs a five-step “sequential evaluation process” to determine
 5 whether a claimant is disabled.³³ If the claimant is found disabled or not disabled at any
 6 particular step thereof, the disability determination is made at that step, and the sequential
 7 evaluation process ends.³⁴ A claimant’s RFC assessment is used at step four of the process to
 8 determine whether he or she can do his or her past relevant work, and at step five to determine
 9 whether he or she can do other work.³⁵ It is what the claimant “can still do despite his or her
 10 limitations.”³⁶

12 A claimant’s RFC is the maximum amount of work the claimant is able to perform based
 13 on all of the relevant evidence in the record.³⁷ However, an inability to work must result from the
 14 claimant’s “physical or mental impairment(s).”³⁸ Thus, the ALJ must consider only those
 15 limitations and restrictions “attributable to medically determinable impairments.”³⁹ In assessing a
 16 claimant’s RFC, the ALJ also is required to discuss why the claimant’s “symptom-related
 17 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the
 18 medical or other evidence.”⁴⁰

20 In assessing plaintiff’s mental RFC, the ALJ found:

21 ³³ 20 C.F.R. § 416.920.

22 ³⁴ *See id.*

23 ³⁵ SSR 96-8p, 1996 WL 374184 *2.

24 ³⁶ *Id.*

25 ³⁷ *Id.*

26 ³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at *7.

1 **She is limited to unskilled work with simple repetitive tasks; rare changes**
 2 **in the work setting; rare judgment or decision making; no interaction**
 3 **with the general public as part of job duties; and only occasional,**
 4 **superficial interaction with coworkers. She should do work dealing with**
 5 **things rather than people. She would be off-task up to 10% of the day.**^[41]

6 But because as discussed above the ALJ failed to properly address the full extent of Dr. Mayers'
 7 opined limitations, the ALJ's mental RFC assessment cannot be said to be completely accurate
 8 or supported by substantial evidence.

9 **III. The ALJ's Step Five Determination**

10 If a claimant cannot perform his or her past relevant work, at step five of the sequential
 11 disability evaluation process the ALJ must show there are a significant number of jobs in the
 12 national economy the claimant is able to do.⁴² The ALJ can do this through the testimony of a
 13 vocational expert.⁴³ An ALJ's step five determination will be upheld if the weight of the medical
 14 evidence supports the hypothetical posed to the vocational expert.⁴⁴ The vocational expert's
 15 testimony therefore must be reliable in light of the medical evidence to qualify as substantial
 16 evidence.⁴⁵ Accordingly, the ALJ's description of the claimant's functional limitations "must be
 17 accurate, detailed, and supported by the medical record."⁴⁶

18 The ALJ found that plaintiff could perform other jobs existing in significant numbers in
 19 the national economy, based on the vocational expert's testimony at the second hearing offered
 20 in response to a hypothetical question concerning an individual with the same age, education,

23 ⁴¹ AR 20 (emphasis in original).

24 ⁴² *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999); 20 C.F.R. § 416.920(d), (e).

25 ⁴³ *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.

26 ⁴⁴ *Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir. 1987); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984).

26 ⁴⁵ *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988).

26 ⁴⁶ *Id.* (citations omitted).

1 work experience and RFC as plaintiff.⁴⁷ But because as discussed above the ALJ erred in
 2 assessing plaintiff's RFC, the hypothetical question the ALJ posed to the vocational expert, and
 3 thus that expert's testimony and the ALJ's reliance thereon, cannot be said to be supported by
 4 substantial evidence or free of error.

5 **IV. Remand for Further Administrative Proceedings**

6 The Court may remand this case "either for additional evidence and findings or to award
 7 benefits."⁴⁸ Generally, when the Court reverses an ALJ's decision, "the proper course, except in
 8 rare circumstances, is to remand to the agency for additional investigation or explanation."⁴⁹
 9 Thus, it is "the unusual case in which it is clear from the record that the claimant is unable to
 10 perform gainful employment in the national economy," that "remand for an immediate award of
 11 benefits is appropriate."⁵⁰

12 Benefits may be awarded where "the record has been fully developed" and "further
 13 administrative proceedings would serve no useful purpose."⁵¹ Specifically, benefits should be
 14 awarded where:

15 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
 16 claimant's] evidence, (2) there are no outstanding issues that must be resolved
 17 before a determination of disability can be made, and (3) it is clear from the
 18 record that the ALJ would be required to find the claimant disabled were such
 19 evidence credited.^[52]

20 Because issues remain as to the medical opinion evidence, plaintiff's RFC, and her ability to
 21 perform other jobs existing in significant numbers in the national economy, remand for further
 22

23 ⁴⁷ AR 28-29.

24 ⁴⁸ *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996).

25 ⁴⁹ *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004) (citations omitted).

26 ⁵⁰ *Id.*

⁵¹ *Smolen*, 80 F.3d at 1292; *Holohan v. Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001).

⁵² *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

ORDER - 8

1 consideration of those issues is warranted.

2 CONCLUSION

3 Based on the foregoing discussion, the Court finds the ALJ improperly determined
4 plaintiff to be not disabled. Defendant's decision to deny benefits therefore is REVERSED and
5 this matter is REMANDED for further administrative proceedings.

6 DATED this 16th day of June, 2016.
7

8
9 
10 Karen L. Strombom
11 United States Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26